

FILED
COURT OF APPEALS
DIVISION II
2016 OCT 26 AM 10:00
STATE OF WASHINGTON
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Court of Appeals, Division II

State of Washington

State of Washington

Respondent,

No. 48713-6-II

v.

Wallace Pruitt III

Appellant.

Statement of Additional
Grounds for Review
RAP 10.10

I, Wallace Pruitt III, have received and reviewed the opening brief prepared by my attorney, Stephanie C. Cunningham WSBA No. 26436.

Summarized below are the additional grounds for review that are not addressed in that brief. I understand the Court will review this Statement of additional grounds for review when my appeal is considered on the merits.

Additional Ground I

The State erred when it cross examined, (IORP 932-34) Pruitt's allocution. (IORP 922-32) This statement (i.e. allocution) is not subject to cross-examination. (Black's Law Dictionary; Sentencing and Punishment, Key 356-360)

The State ~~agrees~~ agrees that you should hold the State to it's burden. (8RP 822) Reverse and remand.

Additional Ground 2

Ineffective Assistance of Counsel when defence failed to subpoena a favorable witness by the name of, Tammie Schager. (2RP 71; Harris v. Reed 894 F. 2d 871; U.S. Const. Amendment 6)

Defence didn't believe she would show up. (2RP 72) More reason to have Tammie Schager served with a friendly subpoena, or a subpoena duces tecum for her text records with Carol Spearance of the night in question.

(3RP 119) Also for her eyewitness testimony to corroborate what Carol Spearance told law enforcement, that Tammie was the third person present. (4RP 279) As did Pruitt in his initial statement to Police Officer Maahs. (1RP 22-23)

Eyewitness, Tammie Schager's text records and testimony to at least some of the night's events in question could have made a difference to the final verdict. for she was mentioned throughout trial.

(1RP 22-23, 28; 2RP 67, 70, 72; 3RP 119, 126; 4RP 279; 5RP 482-83; 6RP 601, 603, 625-26; 7RP 695, 745; 8RP 849-862)

Jurors never heard from or saw Ms. Tammie Schager throughout trial.

Defence also had deficient performance in

that it motioned the court to exclude an out of court statement made by Carole Spearance: "She believes that He put the gun in His Honda Accord"; (GHP 589-93) So the jury wouldn't hear it. Then during closing defence said: "failure to execute a search warrant on my client's car before it was released from impound when the police knew where it was. We want you to assume that there was a gun in there". (SHP 853)

Due to deficient performance, prejudice caused, and failure to call a favorable witness - Appellant motions this court for a reverse and remand for new trial.

Additional Ground 3

The trial court erred when it allowed exhibit 53, alleged text messages between Carol Spearance and Anthony Curry into evidence without having it authenticated as legitimate, by a Subpoena for records from Verizon wireless. (SHP 355)

Anthony P. Curry said He prepared these (text) a while ago in hoping that this would be able to be introduced as evidence. (SHP 353) But text was not given to the state until the middle of trial. E-mail from Mr. Curry to State: "Susan, thank you for reaching out to me. Yesterday, I planned on reaching out to you today in regards to

Something I found on "one" of my old cell phones." (5RP 323-24) Then later defence didn't find out about text until 08:58 a.m. on 2-8-16. (5RP 328) Defence: "I haven't been able to advise my client about what he maybe should or shouldn't do as a result of devastating information." (5RP 330) "This is single-handedly the most devastating evidence in this case, bar none." (5RP 330) "If counsel is going to persist in putting this before the court, I feel compelled to ask the court in limine to exclude it. In the alternative, grant me a mistrial or a lengthy recess so that I can confront." (5RP 332)

Carol Spearance told ex-husband that she didn't text him. (5RP 337) Carol Spearance: "Ex-husband (Anthony Curry) threatened that CPS is going to take the girls from me if I don't testify against Wallace." (5RP 338) "He (Anthony Curry) has severe, severe bias against Wally because He (Wally) started developing a relationship with the girls and was there for them when He (Anthony Curry) was absent from their life for five months."

(5RP 338) Mr. Curry even told his daughters during trial that; "CPS is going to take you away from your mother if Wallace comes home." (5RP 339) Anthony Curry has known Carol Spearance since January 13, 1989, and has knowledge of how she

Speaks and writes. (5RP 429) He worked for LG Electronics, had "seven or eight" different cell phones. (5RP 354-55) Is a project manager for T-mobile in the engineering department. (5RP 358) Carole Spearance: "Honestly, I would not put it past him (Anthony Curry) to fabricate it" (the text). (5RP 337) "I did not text these, and I would not text him (Anthony Curry). I have had to change my number because he (Anthony Curry) won't leave me alone". (6RP 513)

Gerald Knight, (8RP 783) has worked over 50 years in the high technology service and support industry in a variety of technical managerial and senior managerial positions. Has his own company doing "IT" consulting services to lawyers, realtors, individuals, small businesses, medium-sized businesses on all kinds of IT installations, network installations, and phone integration. (8RP 788-89) He said about Exhibit 53 (i.e. Text): "Most of the text are one-sided, (8RP 783) it looks to me as though it is a third-party app that is reading and presenting the text back to the reader". (8RP 794) Can't tell if they are spoofed text or legitimate, (8RP 795-96) But in His opinion they could be spoofed. (8RP 786) Even if he (Gerald Knight) had the phone in his hand in open court or in his laboratory he couldn't

tell if the text were legitimate or illegitimate. (8RP 797) Even if you delete the app the text would still be in the phone. These apps are illegal in Australia, semi legal in the UK, but legal in the U.S. (8RP 792) Defence: "Now suppose I were to give you advance notice of this, (i.e. Exhibit 53 text) is there a way that you could confirm or deny whether it was a spoof or not?"

Mr. Knight: "You would have to contact the provider, either the Verizons or the AT&Ts of the world and have them go through their call logs and provide that information to you." (8RP 793)

Which was not done in this case. But rather the text messages were projected on to a screen in full view for jury to read for, "illustrative purposes" only. (5RP 436) It was a manifest in justice to allow these text into trial without first being authenticated as legitimate. Which caused prejudice in the jury in relation to the final verdict. Defendant/Appellant motions this court to dismiss with prejudice text messaging evidence used in this case against Mr. Pruitt.

Additional Ground 4

The trial court erred when it allowed exhibit 43(a) (i.e. Shotgun) to be admitted as evidence. Pruitt was charged with assault in the second degree with a

deadly weapon; to wit: a handgun, not the shotgun. Count I (one), has always been Assault, Domestic Violence; deadly weapon, handgun; fire sentencing enhanced with a pistol, a .45; in the alternative, strangulation. Count II (two), That is for the handgun, the .45. That was not recovered. (IRP 51-53) On January 15, 2016; We then added Count III, unlawful possession of a firearm in the first degree for the shotgun. That was in the closet at the home where Mr. Pruitt lived. (IRP 51-52)

When Pruitt gave his initial statement to Officer Maahs, He stated that Ms. Curry had a shotgun, I believe, inside the residence. (IRP 24) Pruitt never stated that he knew exactly where it was but in general. The Appellant's finger prints weren't even on the shotgun. (GHP 761)

Officer Miller after speaking with Carol: "I knew that we had to check to see if she (i.e. Tammie) was there or anybody was in the house injured. I asked her (Carol) if I had permission to go in her house. I asked her for the keys to her house". (GHP 603) On that key chain were, car key to buick that police drove and parked, key to shotgun case and key to house.

When Officer Miller and four other "unidentified" officers entered the home. (GHP 606) They were not looking for a shotgun but rather, a shell casing in the garage and Tammie. (GHP 607)

Another "unidentified" officer grabbed the Shotgun case out of the closet. (GRP 608-609) Officer Miller: "I did not specifically grab it (Shotgun case) out of the closet, ~~but~~ I know it came from the closet, but I didn't grab it from the closet." (GRP 630) Officer Miller never actually saw the condition of the Shotgun case before it came out of the closet, whether it was locked or if the other "unidentified" officer unlocked it.

Officer Miller: "Another officer went through the closet I don't know which one. We were all going into the room and the closet at the same time. They went into the closet. The other officers came out with the Shotgun. I saw it. The Shotgun case coming from the closet, I don't recall who was carrying it, and it got placed on the bed. That's when I took over." (GRP 631-32) Miller than left the house at 04:58 a.m. with Shotgun and case, Went to St. Claire Hospital arriving at 05:13 a.m. (GRP 614-15) He than had Carol Spearance sign a consent to search without a warrant. (GRP 616-17, 633, 647)

There are three requirements for establishing a consensual warrantless search, third being: (3) The Search must not exceed the scope of the consent. (State v. Thompson 92 P.3d 228, 151 Wash. 2d 793) The scope of the authority of a cohabitant to consent to a search of the premises extends only to areas shared by the cohabitants. (West's RCWA Const.

Art. I, Sec. 7, State v. Morse, 123 P.3d 832, 156 Wash. 2d 1.) Unlike the U.S. Const. Amendment 4, Wash. Const. Art. I, Sec. 7, clearly recognizes an individual's right to privacy with no express limitations.

Carol Spearance did not willingly consent to law enforcement to let them go into the house and search it and do whatever they needed. (4RP 265) Neither does she remember giving consent. (3RP 138) Pruitt and Spearance have separate closets. (3RP 152; 4RP 257-262) The shotgun case was locked. (3RP 150) Spearance left shotgun alone and locked pending court order. (4RP 305-07) On the night in question there was a lock on the box and she never took it off, nor has seen it since that night. (4RP 265) She didn't see the locks at trial for her shotgun case. (3RP 154; 4RP 264)

Not only do we have a chain of custody issue here and spoliation, Carol Spearance's Ferrier Warnings were violated. (State v. Ferrier 136 Wn.2d 103; 960 P.2d 927; 1998 Wash.) Mr. Pruitt's heightened privacy rights under Wash. Const. Art. I, Sec. 7 were also violated. On the night in question Mr. Pruitt never fired a weapon. He never had a weapon; said Spearance. (3RP 185)

The Appellant motions this court to suppress all of the evidence obtained as a result of the search of

the home. (CCR 3.6(a))

Additional Ground 5

The trial court erred when it allowed exhibit 44 (i.e. metal fragment) to be admitted as evidence.

Pruitt was in custody at approximately 04:13 hours on 4-12-15. (1RP 24-25) At approximately 11:30 a.m. - 12:00 p.m. the same day (4-12-15)

Roxann Smith's son called and told her that the window had been shot at. When Roxann Smith arrived home at approximately 1:30 p.m. - 2:00 p.m. She called 9-1-1. (6RP 562-63) Approximately 9 hours after Pruitt was in custody.

Roxann Smith testified to hearing gunfire in neighborhood, (~~that~~ 6RP 560) outside of the night in question for she wasn't home nor was her son.

Detective Steve Thornton agreed that gunshot are common in that neighborhood. (7RP 718) Carol Spearance testified to gunfire regularly being in neighborhood. (4RP 230, 277) Jessica Curgy testified to gunfire regularly being in neighborhood. (5RP 396)

Detective Steven Thornton acknowledged that he can't tell if exhibit 44 (i.e. metal fragment) came from a .45 caliber, a 9-millimeter, a revolver, a slingshot, or if it was fired from across the street or anywhere around Pruitt's house. (7RP 739-40)

Detective Brian Vold didn't see how the crime lab could identify exhibit. That was his opinion. It wasn't a direct order not to. (GRP 532) No chemical study was done on this (exhibit) to determine if there was gunpowder present, no blood test, nor trajectory studies done. (GRP 719-21) But as Shea Wiley said: "Yes, a trajectory study could have been completed in this case if a request for one been made." (GRP 768) Based upon a coincidence alone, that it seemed to an officer this metal fragment had something to do with this case, even though it was called in approximately 9 hours after Appellant Pruitt was already in custody.

On the night in question Police officers searched the home of Pruitt and Spearance, also surrounding area and found no evidence of a shooting, nor an alleged bullet hole in neighbor Roxann Smith's front window. Appellant Pruitt motions this court to dismiss this so called evidence with prejudice.

Dated: October 17, 2016

Wallace Pruitt III

Appellant: Wallace Pruitt III

I certify that on 10-²⁴-2016, I mailed a copy of this document to: Stephanie C. Cunningham WSB#26436.

Wallace Pruitt III #808874

DECLARATION OF SERVICE BY MAIL
GR 3.1

I, Wallace Pruitt III #808874, declare that, on
this 14th day of October, 2016, I deposited the foregoing documents:

Statement of Additional Grounds for Review
RAP 10.10, for Appeal No. 48713-6-II.
SAG 11 pages total.

or a copy thereof, in the internal legal mail system of

Clallam Bay Corrections Center, Imu/E-D09.

And made arrangements for postage, addressed to: (name & address of court or other party.)

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I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated at Clallam Bay, WA on 10-27-16
(City & State) (Date)

Wallace Pruitt III
Signature

Wallace Pruitt III
Type / Print Name